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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Third periodic reports of States parties due in 1996

Addendum

LUXEMBOURG*

[30 October 2000]

* For the initial report of Luxembourg, see CAT/C/5/Add.29; for its consideration, see CAT/C/SR.107 and 108 and Official Records of the General Assembly, Forty-seventh session, Supplement No. 44 (A/47/44), paras. 285-309. For the second periodic report, see CAT/C/17/Add.20; for its consideration, see CAT/C/SR.376, 379 and 383 and Official Records of the General Assembly, Fifty-fourth session, Supplement No. 44 (A/54/44), paras. 170-175.

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Introduction

1. The Grand Duchy of Luxembourg hereby submits its third report to the Committee against Torture in accordance with article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. This report supplements the preceding reports submitted by Luxembourg. Several ministers have taken part in its preparation. Some non-governmental organizations were also contacted to provide their analysis of the situation in Luxembourg.

3. In accordance with the new guidelines for the submission of reports (CAT/C/14/Rev.1) adopted by the Committee against Torture on 2 June 1998, this report is divided into three parts, i.e. part I describing the most important changes in legislation and institutions, monitoring by the authorities and specific measures taken as a result of complaints filed by individuals; part II on the additional information requested by the Committee; and part III on measures taken to give effect to the Committee's conclusions and recommendations.

4. Many of the reforms which were referred to during the introduction to the second report and which have considerably strengthened the country's legislative arsenal have since been voted on by the Chamber of Deputies. New institutions have been established, including the Advisory Commission on Human Rights, the General Police Inspection Department and the new Grand Ducal Police, which was created following the merger of the former police and gendarmerie forces, and specific measures have been taken in certain areas, particularly with regard to the problem of prison suicide and drug addiction.

PART I

I. INFORMATION ON NEW MEASURES RELATING TO THE IMPLEMENTATION OF THE CONVENTION

A. Article 2

5. Torture and cruel treatment are punishable under the Luxembourg Penal Code:

(a) Directly, under the provisions specifically relating to acts of torture (chap. V-1, arts. 260-12 to 260-4, introduced by the Act of 24 April 2000);

(b) Indirectly, under the provisions relating to offences involving abuse of authority (art. 257 of the Penal Code) and wilful infliction of bodily harm (arts. 398 to 401 bis of the Penal Code);

(c) Directly, as an aggravating circumstance of a crime or offence against a person (for example, physical torture of a detainee: art. 438 of the Penal Code) or as an aggravating circumstance of a crime or offence against property (for example, extortion or theft committed with violence or with threats: art. 473 of the Penal Code);

(d) Under special laws (referred to in Luxembourg's additional report of 15 October 1991 (CAT/C/5/Add.29)).

6. The Act of 24 April 2000 adapting internal law to the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the Act of 31 July 1987, incorporates a new chapter V-1 in book II of the Penal Code (arts. 260-1 to 260-4).

7. Previously, only acts committed by individuals against other individuals were specifically characterized as acts of torture by the Penal Code (art. 438). As a result of the introduction of the new article 260-1, the Penal Code now also specifically punishes acts of torture committed by persons in the public sector. The text of this provision, which is based broadly on the definition of acts of torture contained in article 1 of the Convention, reads:

> "Article 260-1. Any public official in a position of authority, any public servant or any one acting at the instigation or with the express or tacit consent of such an individual who wilfully inflicts torture in such a manner as to cause pain or acute physical or mental suffering in order to extract information or confessions from an individual or third party; to inflict punishment for an act which an individual or third party has either committed or is suspected of having committed; to intimidate or put pressure on an individual or third party; or for any other reason based on any form of discrimination whatsoever shall be punishable by five to 10 years' imprisonment."

8. Articles 260-2, 260-3 and 260-4, which gradually increase the penalties depending on the type of harm or injury resulting from acts of torture, read:

> "Article 260-2. If the torture inflicted has resulted in illness or incapacity for work, the penalty shall be 10 to 15 years' imprisonment.
>
> Article 260-3. If the torture inflicted has resulted in apparently incurable illness, permanent incapacity for work, complete loss of use of an organ or severe mutilation, the penalty shall be 15 to 20 years' imprisonment.
>
> Article 260-4. If the torture inflicted has caused death, albeit unintentionally, the penalty shall be life imprisonment."

9. It should be noted that these provisions relate not only to traditional physical torture, but also to mental torture, which is more subtle and more a reflection of modern times.

10. Even if such acts are still fortunately unknown in Luxembourg at present, criminal legislation has been adapted in order better to guarantee the prevention and punishment of this type of conduct.

B. Article 3

11. This article of the Convention prohibits the expulsion, return ("refoulement") or extradition of a person to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture or similar treatment.

12. Article 14, paragraph 3, of the Act of 28 March 1972 (amended) on (1) the entry and residence of aliens; (2) medical examinations for aliens; and (3) the use of foreign labour states that an alien may not be expelled or deported to another country if it can be established that he would be subjected to the treatment referred to in articles 1 and 3 of the Convention (see the 1991 report (CAT/C/5/Add.29) and the 1998 report (CAT/C/17/Add.20) of Luxembourg).

13. The Kosovo crisis showed that the basic provisions of the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 and ratified by Luxembourg by means of the Act of 22 May 1953, and the national procedure provided for by the Act of 3 April 1996 on the consideration of asylum applications were no longer suitable and did not enable the authorities to handle asylum applications within a reasonable time when a large-scale inflow of refugees occurred.

14. With the encouragement of the Office of the United Nations High Commissioner for Refugees (see opinion of 13 September 1999, parliamentary document No. 4572/5), the lawmakers set up two additional systems by means of the Act of 18 March 2000 establishing a temporary protection regime and amending the Act of 3 April 1996 (amended) establishing a procedure for the consideration of asylum applications:

(a) A temporary protection regime to enable the authorities to deal speedily, in a well-defined case of a large-scale inflow of asylum-seekers, with the asylum-seekers' legal and administrative situation during their stay in Luxembourg territory;

(b) A measure by the Aliens Department enabling the Minister of Justice to grant special status to asylum-seekers whose deportation is materially impossible.

15. The Act of 24 April 2000 adapting internal law to the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also adds some provisions to the Foreign Criminals Extradition Act of 13 March 1870.

16. In particular, the following article 8-1 was included in the 1870 Act:

> "Article 8-1. No person shall be extradited where there are substantial grounds for believing that he would be in danger of being subjected to torture as defined in articles 1 and 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms."

C. Article 4

17. As already indicated in connection with article 2 above, in addition to the provisions of the Penal Code on murder and wilful infliction of bodily harm (arts. 398 et seq. of the Penal Code) and the provisions relating specifically to acts of torture inflicted by individuals (art. 438 of the Penal Code), which provide for terms of imprisonment varying in length according to the seriousness of the harm or injury suffered by the victim, articles 260-1 to 260-4, which were recently introduced in the Penal Code by the Act of 24 April 2000 adapting internal law to the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, also provide for a system by which prison terms vary according to the harm or injury suffered by the victim of acts of torture.

18. Just as acts of torture are characterized as crimes, so are attempt and complicity (book I, chap. IV: "Attempted crimes and offences", arts. 51 and 52 of the Penal Code, and chap. VII: "Participation by several persons in the same crime or offence", arts. 66 to 69).

D. Article 5

19. In addition to the classification of acts of torture in articles 260-1 to 260-4, the Act of 24 April 2000 has, in accordance with article 5, paragraph 1 (c), of the Convention, introduced a new article 7-3 in the Code of Pre-Trial Proceedings, which reads:

> "Article 7-3. Anyone outside the territory of the Grand Duchy who has committed one of the offences provided for in articles 260-1 to 260-4 of the Penal Code against a citizen or resident of Luxembourg can be prosecuted and tried in the Grand Duchy.
>
> However, no proceedings shall be instituted against an accused person who has been tried for the same offence in a foreign country and acquitted.
>
> The same shall apply if, having been tried and convicted, he has served his sentence or the punishment has been time barred or he has been pardoned.
>
> Any period of detention served abroad in consequence of the offence which gives rise to a conviction in the Grand Duchy shall be set against the period of any custodial sentence."

20. This new article thus establishes extraterritorial jurisdiction for Luxembourg courts in order to cover the case in which the victim of one of the acts referred to articles 260-1 to 260-4 of the Penal Code is a Luxembourg national or a resident of the Grand Duchy.

21. In accordance with the objectives of article 3, paragraph 1, and article 5, paragraph 2, of the Convention and in order to ensure that the perpetrator of an act of torture within the meaning of articles 260-1 to 260-4 of the Penal Code does not go unpunished as a result of non-extradition, the Act of 24 April 2000 established active universal jurisdiction by introducing the following new article 7-4 in the Code of Pre-Trial Proceedings:

"Article 7-4. Anyone in a foreign country who has committed one of the offences provided for in articles 260-1 to 260-4 of the Penal Code can be prosecuted and tried in the Grand Duchy when an application for extradition has been submitted, but the person concerned has not been extradited."

E. Article 6

22. It should be pointed out that, on the basis of the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its two reports to the Government of Luxembourg dated 12 November 1993 and 27 June 1997, the Act of 24 April 2000 also updated the guarantees available to any person in detention under article 39 (police custody) and article 45 (identity check) of the Code of Pre-Trial Proceedings.

23. With regard to police custody, as referred to in article 39 of the Code of Pre-Trial Proceedings, a detainee is now formally informed by law enforcement officials, at the time of his arrest and in a language he understands, except in duly recorded cases of material impossibility, of his right to ask to be examined by a medical officer and his right to the assistance of legal counsel. He is also informed of his right to notify a person of his choosing, if the requirements of the investigation so permit.

24. Article 39, paragraph 8, now provides that a detainee's records must also indicate the day and time at which he was informed of his rights, as well as, if necessary, the reasons for a denial of or a delay in the implementation of his right to notify a person of his choosing.

25. In practice, a pre-printed note listing the rights to which he is entitled and drafted in a language he understands is to be handed to the detainee at the time of his arrest.

26. The procedure for identity checks referred in article 45 also now makes it an obligation for law enforcement officials to provide the person detained for an identity check with a formal notification in writing, against a receipt and in a language he understands, except in duly recorded cases of material impossibility, of his right to notify a person of his choosing and to have the Public Prosecutor informed.

F. Article 7

27. The Act of 24 April 2000 adapting internal law to the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also provided for additions to the list contained in article 1 of the Foreign Criminals Extradition Act (amended) of 13 March 1870 on offences for which extradition may be granted and for the inclusion of the offences referred to in the new articles 260-1 to 260-4 of the Penal Code.

28. If, as an exception, Luxembourg did not extradite a person wanted by another State for trial on a charge of torture, that person would be tried by Luxembourg courts either on the basis of their jurisdiction under article 5 of the Code of Pre-Trial Proceedings, in the case of a Luxembourg national, or, more generally, on the basis of the new article 7-4 of that Code (see art. 5 above).

29. The obligations deriving from article 7 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are directly applicable in Luxembourg.

G. Article 8

30. The obligations deriving from article 8 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are also directly applicable in Luxembourg, so that, as far as Luxembourg is concerned, the offences referred to in article 4 of the Convention are automatically included in any extradition treaty concluded with another party to the Convention.

31. As stated above in connection with article 7, the Act of 24 April 2000 made some additions to the list of offences in the Foreign Criminals Extradition Act (amended) of 13 March 1870 for which the courts may, in the absence of a treaty, order the extradition of a foreign criminal in the Grand Duchy of Luxembourg to the requesting foreign authorities.

H. Article 9

32. As a result of the adoption of the Act of 8 August 2000 on International Judicial Assistance in Criminal Matters, Luxembourg has new legislation on judicial assistance that substitutes more complete regulations for the earlier regime, which consisted only of the provisions of article 59 of the Judicial Organization Act (amended) of 7 March 1980.

33. It should also be pointed out that Luxembourg and its European Union partners recently signed the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, which supplements earlier instruments that are binding on those States.

I. Article 10

34. With regard to the education and training of persons who may be in contact with any individual subjected to any form of arrest, detention or imprisonment, it should be noted that, at the time of recruitment, future police and criminal investigation officers are given a psycho-technical test monitored by a psychologist. In order to guarantee training in the prevention of any abuse of police powers, the subjects taught at the Police Training School are very diversified and include: constitutional freedoms, the rights and duties of officials, assistance to victims, conduct vis-à-vis citizens, conduct in situations of violence, conflict management, police ethics, human rights, the rules contained in the Code of Pre-Trial Proceedings, the Penal Code and special laws, the conduct of an investigation, the hearing of evidence and response methods. Now that the former police and the former gendarmerie form a single Grand Ducal police force, police training has also been standardized by the Police Training School.

35. In order to give future police officers the best training, as well as high-quality in-service instruction, courses are taught by persons with the most thorough knowledge of the subjects offered, i.e. by senior police officials and, in the case of the ethics course, by the Grand Ducal General Police Inspector or by professors or lecturers.

36. On the basis of such instruction, the "human rights" course is coordinated with representatives of Amnesty International and role playing courses are organized in cooperation with the Support Association for Immigrant Workers (ASTI).

37. The report on the training of prison staff is annexed to the present report. Since prison guards have to perform voluntary military service, they receive instruction in human rights and the prevention of torture during their basic training.

38. Respect for the inherent dignity of the human person is a primary obligation of prison administrators and is provided for in article 16 of the Grand Ducal regulations of 24 March 1989 on the internal administration and regulations of prisons. In addition to the related provisions of the Penal Code, article 52 prohibits, inter alia, prison staff from committing acts of torture or cruel, inhuman or degrading treatment or punishment and acts of violence against detainees and from using insulting, vulgar or familiar language with them.

39. The staff of State Socio-Educational Centres is composed of the following:

(a) Educator instructors;

(b) Educators;

(c) Graduate educators;

(d) Psychologists and social welfare workers.

40. They receive three types of training:

(a) Administrative Training Institute (IFA) courses, which relate primarily to the subject of the rights of the child;

(b) Workshops (four in 1999);

(c) Supervision.

J. Article 11

41. In accordance with articles 15-2 and 21 of the Code of Pre-Trial Proceedings, the supervision and monitoring of the criminal investigation service as a whole, i.e. criminal investigation police officers and officials and agents empowered by law to act as criminal investigation police officers acting in that capacity, are the responsibility of the Public Prosecutor.

42. As indicated above in connection with article 6, the guarantees to which a detainee is entitled and which the lawmakers provided for in articles 39 and 45 of the Code of Pre-Trial Proceedings on police custody and identity checks by law enforcement officials were supplemented by the Act of 24 April 2000.

43. Henceforth, a person arrested by law enforcement officials is informed in writing and against a receipt, in a language he understands, of his right to communicate with a person of his choosing. A telephone is made available to him for this purpose.

44. A person arrested by law enforcement officials is also informed, according to the same methods, at the time of arrest, of his right to be examined without delay by a medical officer. Intervention by a medical officer may also be ordered by the Public Prosecutor at any time, as a matter of course or at the request of a family member.

45. If they consider it necessary, law enforcement officials may also summon a medical officer directly.

46. Prison management and surveillance come under the authority of the Public Prosecutor and the representative of the Public Prosecutor appointed especially for this purpose, respectively.

47. At the Dreiborn and Schrassig State Socio-Educational Centres, supervision is carried out by the Supervision and Coordination Commission (CSC), which is composed of representatives of the Minister of the Family, the Minister of National Education and the Public Prosecutor.

K. Article 12

48. There are no specific procedural provisions governing the crime of torture. However, ordinary law provides certain guarantees to ensure that an inquiry is opened.

49. For example, where criminal inquiries are concerned, the Public Prosecutor may take up the case ex officio. In practice, a preliminary inquiry is always ordered when injury to persons is suspected.

50. In criminal cases, referral to an examining magistrate is obligatory.

51. In disciplinary cases, an inquiry must be ordered by the commanding officer on learning of a serious breach of professional obligations. An allegation of police brutality, for example, is invariably considered to be a serious breach leading to disciplinary action.

52. A table of cases involving allegations of ill-treatment by police officers, with an indication of follow-up, is annexed to this report.

L. Article 13

53. Article 1 of the Code of Pre-Trial Proceedings states that: "Criminal proceedings for the enforcement of penalties are instituted and conducted by judges or officials specified by law. Proceedings may also be instituted by the injured party, under the conditions provided for in this Code or in special laws".

54. Ordinary law procedures are applicable to cases of torture or inhuman, cruel or degrading treatment. They guarantee the right of all victims to file a complaint, with either the criminal investigation police, the Public Prosecutor or an examining magistrate. This right is unlimited.

55. In its coalition agreement (governmental statement of August 1999), the Government indicated that it wanted to make further improvements in the situation of victims of offences by providing them with appropriate legal, material and moral assistance, which might be extended to members of their families. A bill designed to improve protection for the victims of offences and for witnesses is currently being prepared.

56. A victims' aid service has been in operation since 1997 as part of the Central Social Protection Service of the Public Prosecutor's Office.

M. Article 14

57. Under articles 2 and 3 of the Code of Pre-Trial Proceedings, a civil suit for compensation for loss or injury suffered by a victim of torture may be brought by the victim against the accused and his or her representatives, either before the court hearing the criminal proceedings or separately before a civil court.

58. The Act of 1 September 1988 relating to the civil liability of the State and public communities stipulates that the State and other public agencies are accountable, each in the framework of its public service mandate, for any loss or injury caused by the malfunctioning of their services, subject to the doctrine of res judicata.

59. Generally speaking, victims of intentional acts of violence or their rightful claimants are, when unable to obtain compensation through other means, for example, because the person responsible for the offence is not known or is insolvent, entitled to compensation from the State of Luxembourg under the conditions provided for by the Act (amended) of 12 March 1984 relating to compensation for certain victims of bodily injury and the punishment of fraudulent insolvency. This is an extra guarantee of compensation which the State provides to victims of violent crimes such as torture.

N. Article 15

60. The principle that evidence must be obtained through legal means is firmly established in French, Belgian and Luxembourg legal scholarship and legal decisions. There is thus little likelihood of a departure from this line, especially as, where evidence obtained under torture is concerned, article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is self-executing in Luxembourg.

61. To guarantee that judicial proceedings will be objective, article 52 of the Code of Pre-Trial Proceedings prohibits criminal investigation police officers from interrogating an accused person after his first appearance before the examining magistrate or, for any reason whatsoever, when the individual concerned is being held in pre-trial detention.

NBS 1010a ANSI/ISO #2 EQUIVALENT

O. Article 16

62. It should be noted at the outset that, in accordance with article 14 of the Luxembourg Constitution, no penalty may be established or applied except in accordance with a law.

63. Cruel, inhuman or degrading treatment or punishment other than torture is punishable under the Luxembourg Penal Code, as follows:

(a) Under the provisions relating to abuse of authority (art. 257) and wilful infliction of bodily harm (arts. 398 to 401 bis);

(b) As an aggravating circumstance of an offence against persons or property (for example, incitement to prostitution: art. 379 bis; extortion or theft committed with violence or with threats (art. 473));

(c) Under special laws (referred to in Luxembourg's initial report of 15 October 1991 (CAT/C/5/Add.29)).

64. Given that the traffic in human beings and the sexual exploitation of children also constitute inhuman and degrading treatment and are becoming an important and serious form of international crime, the Act of 31 May 1999 strengthening measures against the traffic in human beings and the sexual exploitation of children and amending the Penal Code and the Code of Pre-Trial Proceedings has strengthened the system of protection for children, adapted or supplemented the Penal Code on certain points and extended Luxembourg law to cover all sexual crimes or offences committed abroad by a Luxembourg national or a person residing in Luxembourg territory.

65. For example, article 379 of the Penal Code now punishes not only incitement of a young person to immorality, prostitution or corruption, as was formerly the case, but also all acts undermining morality or aimed at facilitating or fostering immorality, prostitution or corruption of a young person under 18 years of age. Similarly, the above-mentioned Act of 31 May 1999 punishes the exploitative use of a minor under 18 years of age in prostitution or pornographic performances or materials, as well as the traffic in minors for purposes of exploitation.

66. The Act also supplements article 379 bis of the Penal Code, which punishes, inter alia, the hiring, influencing or enticement of a person, even with his or her consent, for purposes of prostitution or immorality, by extending the cases carrying increased sentences referred to in the preceding text to include not only situations where the victim has been hired, influenced or enticed fraudulently or with violence, threats, abuse of authority or any other means of coercion and situations where the victim has actually been made to engage in prostitution or immorality, but also situations where the perpetrator of the offence has taken unfair advantage of a person's particularly vulnerable situation, such as an illegal or precarious administrative situation, pregnancy, illness, disability or physical or mental impairment.

67. The Act also introduces a new article to the Penal Code (art. 384) establishing penalties for the possession of pornographic material featuring children and increasing all applicable penalties.

68. Sexual harassment, which is considered to be degrading treatment, is now punishable under the Act of 26 May 2000 concerning protection against sexual harassment at work and amending various other laws. The lawmakers have thus shown that they are determined to take effective action against sexual harassment, a reflection of societal violence, through national labour legislation.

II. INFORMATION ON THE ESTABLISHMENT OF NEW INSTITUTIONS AND THE ADOPTION OF SOME SPECIAL MEASURES

69. In view of Luxembourg's commitment to democratic values, the Government, which is aware of the fact that a multisectoral, coherent policy in that area is essential, deemed it appropriate to set up a forum for analysis and innovation to achieve a dynamic partnership with civil society that will also be responsible for developing a human rights education programme.

70. On 26 May 2000, the Government therefore introduced regulations of the Government in council establishing the Advisory Commission on Human Rights.

71. The Commission is an advisory body to the Government and is responsible for assisting it, through studies and opinions, on all general human rights issues throughout the territory of the Grand Duchy of Luxembourg.

72. The Commission issues opinions and prepares studies, either on its own initiative or at the Government's request, and can propose measures and programmes of action to the Government which it considers conducive to the protection and promotion of human rights, in particular in academic, university and professional circles.

73. The Commission also acts as national correspondent for the European Monitoring Centre for Racism and Xenophobia.

74. The Act of 31 May 1999 establishing the Grand Ducal police force and the General Police Inspection Department, whose main objective is in fact to merge the police and the Gendarmerie, two institutions which have in the past functioned independently from each other, also set up a new institution, the General Police Inspection Department, which is responsible for monitoring the Grand Ducal police and is fully independent from it.

75. It has a twofold monitoring function covering both the lawfulness of police activities and the quality of police services. It works essentially on behalf of the Minister of the Interior, the Minister of Justice, the Public Prosecutor and the other judicial authorities.

76. Through the Act of 14 August 2000 approving the Rome Statute of the International Criminal Court, done at Rome on 17 July 1998, Luxembourg approved the Statute of the International Criminal Court, a permanent and independent court which tries the most serious crimes of concern to the international community as a whole.

77. As the Court's jurisdiction is unlimited ratione temporis and ratione loci, it includes the crimes of genocide (art. 6 of the Statute), crimes against humanity (art. 7) and war crimes (art. 8).

78. With regard to crimes against humanity, article 7 of the Statute explicitly defines torture as an act which may be defined as a crime against humanity when perpetrated as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

79. In its opinion of 4 May 1999 (parliamentary document No. 4502/1), the Council of State explained: "The Council of State wishes to draw attention to the provision contained in article 31, paragraph 1 (c), of the Statute. This provision, which is included among the grounds for excluding criminal responsibility, might prove to be weaker than those of other international law instruments to which Luxembourg is a party. These are, inter alia, the International Covenant on Civil and Political Rights (art. 4, para. 2) and the Convention for the Protection of Human Rights and Fundamental Freedoms (art. 15). Another such instrument is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 2, para. 2). These international law instruments do not permit the use of torture under any circumstances whatsoever, even in cases of war or threat of war, for example. This provision may be compared with article 22, paragraph 3, of the Statute, which stipulates (...). Consequently, the provision contained in article 31 of the Statute does not exempt Luxembourg from its obligations under other international law instruments to which it is a party and does not require national courts trying cases of prohibited conduct to examine the criminal responsibility of an accused person in the light of the provisions of the Rome Statute, which is particular to the International Criminal Court."

80. Judicial placement in a closed psychiatric establishment or service of an accused person found criminally irresponsible by the judge hearing the case was introduced by the Act of 8 August 2000 amending:

(a) Book I, chapter VIII, of the Penal Code;

(b) Article 3 of the Code of Pre-Trial Proceedings;

(c) The Act of 26 May 1988 relating to the placement of mentally disturbed persons in closed psychiatric establishments or services; and

(d) The Act of 27 July 1997 relating to the reorganization of the prison administration.

81. Former article 71 of the Penal Code, as contained in Book I, chapter VIII, of the Penal Code, entitled "Grounds for justification or excuse", provided simply that no offence was considered to have been committed when an accused was of unsound mind at the time of the offence or when he or she had been in the grip of an irresistible force.

82. However, this solution proved to be unsatisfactory both for the mentally ill offender and for society, as, when dealing with a mentally disturbed person who had committed a serious offence, the judge had no choice but to sentence the person in question to a criminal penalty or to acquit that person, if the mental disturbance was such that it could be characterized as dementia and the perpetrator of the offence could be considered to be criminally irresponsible. In the latter case, however, former article 71 of the Penal Code did not take account of the protection of the legitimate interests of society against the potential dangers which the disorders of certain offenders might create. The Act of 26 May 1988 relating to the placement of mentally disturbed persons in closed psychiatric establishments or services did allow the placement of such offenders. But placement in such cases was aimed only at treating the patient and failed to deal with the seriousness of the offence which he or she had committed. The judicial authority was therefore deprived of all control over the duration of the placement and it was for the doctors alone to decide when the patient would be discharged.

83. The Act of 8 August 2000 thus amended the title of Book I, chapter VIII, of the Penal Code to read: "Grounds for justification, irresponsibility or mitigation of responsibility, and excuse" and replaces the text of article 71 by the following:

> "Article 71. A person who, at the time of the offence, was suffering from a mental disturbance which caused him or her to lose discernment or control over his or her acts shall not be held criminally responsible.
>
> When examining magistrates or trial courts find that an accused is not criminally responsible within the meaning of the preceding paragraph and when the mental disturbance which has caused the accused to lose discernment or control over his or her acts persists, they shall, by the same decision, order the accused to be placed in an establishment or service authorized by law to receive persons subject to a placement measure to the extent that the accused still constitutes a danger to himself or others. Examining magistrates or trial courts may, if necessary, assign a lawyer to an accused who has not chosen one himself.
>
> A placement decision may be appealed or contested in the form and time provided for in the Code of Pre-Trial Proceedings. However, the placement measure will continue to be in effect even when an appeal has been filed against the decision which ordered it."

84. The Act also added the following two new articles to the Penal Code, following article 71:

> "Article 71-1. An individual who, at the time of the offence, was suffering from a mental disturbance which altered his or her discernment or impeded control over his or her acts remains punishable; however, the court shall take this circumstance into account in determining the penalty.
>
> Article 71-2. A person who has acted in the grip of an irresistible force or constraint shall not be held criminally responsible."

85. For offenders showing signs of mental disturbance, either in pre-trial detention or while serving their prison sentence after a final conviction, the applicable legislation is the Act of 27 July 1997 relating to the reorganization of the prison administration (article 9: establishment of a special medical section within the Luxembourg prison for drug-addicted and mentally disturbed detainees).

86. The new Act has also adapted some provisions of the Act of 26 May 1988 relating to the placement of mentally disturbed persons in closed psychiatric establishments or services, which did not provide for the possibility of judicial placement, and added a new chapter on persons under judicial supervision.

87. As indicated by the statistics contained in the annex to this report, a large number of inmates in Luxembourg prisons have been imprisoned for violations of the legislation to combat drugs and drug addiction. It has been found that many detainees continue to suffer from drug addiction, even after imprisonment. Consequently, the Minister of Justice has requested that overall plans should be prepared and implemented to care for drug-dependent persons in prisons. A brief report on the objectives and status of the plans is also contained in the annex.

88. In view of the substantial increase in suicides at Luxembourg prison in Schrassig (see annex for statistics), the Government requested two French experts to conduct an appraisal of general conditions of accommodation, care, observation and monitoring of detainees and to analyse the means used to provide medical care and psychological supervision for detainees, especially those displaying suicidal behaviour. On the basis of the experts' proposals and recommendations, the prison administration has taken the necessary steps to reduce the suicide risk in prisons to the fullest extent possible. A copy of the experts' report is contained in the annex to this report.

PART II

INFORMATION REQUESTED BY THE COMMITTEE

89. Representatives of the Luxembourg Government submitted Luxembourg's second periodic report to the Committee against Torture on 6 May 1999. On that occasion, the Committee requested additional information, with which it was provided orally by the members of the delegation of Luxembourg, supported by a written note. It therefore does not appear necessary to reproduce that information in the present report.

PART III

INFORMATION ON MEASURES TAKEN TO GIVE EFFECT TO THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS

90. This part relates to developments in the subjects of concern referred to by the Committee during its consideration of Luxembourg's latest report, on 6 May 1999.

91. The information contained in part III of this report should be read in the light of the content of parts I and II and of past reports of the Grand Duchy of Luxembourg.

A. Subjects of concern

92. When it considered the second periodic report of Luxembourg, the Committee expressed the following concerns:

(a) The excessive length and frequent use of strict solitary confinement of detainees and the fact that this disciplinary measure may not be the subject of appeal;

(b) The situation of young offenders held in Luxembourg prison;

(c) The disciplinary regime imposed on minors held in the Socio-Educational Centres;

(d) The fact that the report did not cover all articles of the Convention, particularly articles 11, 14 and 16.

Subparagraph (a)

93. Since the submission of Luxembourg's second periodic report to the Committee against Torture, the Chamber of Deputies adopted the Act of 8 August 2000 amending: (a) certain provisions of the Sale of Medicinal Substances and Drug Addiction Control Act (amended) of 19 February 1973; (b) the Act of 26 July 1986 on certain modes of enforcement of custodial sentences.

94. Based on the recommendations of the Committee against Torture and the European Committee for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment, the Act of 8 August 2000 was adopted, supplementing the Act of 26 July 1986 on certain modes of enforcement of custodial sentences, in order to guarantee detainees the possibility of appealing a decision ordering their placement in strict solitary confinement, either as a disciplinary measure or because they are reputed to be dangerous.

95. An appeal may be filed merely by addressing a letter to the prison commission provided for in article 12 of the above-mentioned Act of 26 July 1986. The commission must issue a reasoned decision on the appeal within 15 days of the day on which it was filed.

96. Action is also being taken to ensure that the period of solitary confinement for disciplinary reasons does not exceed one month.

97. Solitary confinement in the two State Socio-Educational Centres (CSEEs) is governed by the Grand Ducal regulations of 9 September 1992 relating to security and discipline in the CSEEs (chap. II, art. 11).

98. The above-mentioned article 11 stipulates, inter alia, that a doctor must examine a detainee in temporary solitary confinement within 24 hours of the commencement of the confinement and that confinement must be suspended if the doctor finds that it is liable to jeopardize the minor's physical or mental health.

99. Young people undergoing solitary confinement have the possibility of appeal to the juvenile court judge, the chairman of the Supervision and Coordination Commission or the doctor. Psychologists from the Centres' psychological/social service interview the young people in question systematically and immediately after solitary confinement is imposed and their opinion is taken into account by senior CSEE staff.

100. Since the establishment of a single administrative structure for the two Centres in January 1999, disciplinary measures have been harmonized.

Subparagraph (b)

101. Copies of the report of the Psychological-Socio-Educational Service (SPSE), which was set up in Luxembourg prison (CPL) in 1999, concerning the supervision of minors in the prison, together with a memorandum (Dienstvorschrift) by the prison governor of 12 January 2000, are transmitted to the Committee against Torture as an annex to the present report.

102. The content of the memorandum, which is in German, may be summarized as follows:

(i) The strict separation of detained minors and detained adults is enforced as a matter of principle;

(ii) Every minor is placed in an individual cell;

(iii) Every minor has the right of access to a lawyer. The instructor ensures that a form requesting the assistance of a lawyer is completed by every detained minor and sent to the president of the competent bar association;

(iv) The minor is informed of the prison regulations;

(v) Any mail sent to or by a minor must be submitted to the juvenile court judge, with the exception of mail between the minor and his counsel and mail sent by the minor to the Head of State, the Government, the Chamber of Deputies, the Minister of Justice or the Public Prosecutor, which must remain sealed;

(vi) Visiting permits are issued by the juvenile court judge. Visits always take place in private. Visiting hours are not limited;

(vii) Subject to prior authorization by the juvenile court judge, the minor has the right, during his leisure hours, to make telephone calls to three people of his choice on two occasions for up to 10 minutes in every week. This limitation does not apply to telephone conversations with lawyers or social workers;

(viii) The CPL administration decides whether personal belongings should be returned to the minor (e.g. wristwatches, decorative small chains);

(ix) Purchases for the minor, totalling up to Lux F 2,500 a week, are made when ordered;

(x) If the minor wishes to send money to a member of his family, he must submit an appropriate request to the CPL administration;

(xi) Minors are allowed to have one television set/playstation of their own or made available by the CPL and to use it during their leisure hours after 5 p.m. (not at night between the hours of 10.30 p.m. and 7 a.m.), provided that they participate in scheduled group activities (school, sports, educational activities). In this connection, they may submit requests to the administration;

(xii) During leisure hours, up to three minors may meet in a cell;

(xiii) Unless decided otherwise by the juvenile court judge, a minor entering the CPL may, after being examined by a doctor, immediately participate in group activities (sports, classes, educational activities, walking in the prison yard, leisure activities);

(xiv) In order to be eligible for rewards, minors must take an active part in scheduled group activities;

(xv) Under the disciplinary regulations, minors must be dressed when breakfast is served and their cells must be tidy. If they are untidy, they may be banned from sport and leisure activities that day and the matter is reported to the administration;

(xvi) If a minor's conduct during a group activity is unsatisfactory, the matter is reported to the administration and the minor is excluded from group activities for a period to be determined by the administration;

(xvii) A minor who has participated in the activities scheduled for the week and has behaved well will, as a reward, be authorized to engage in a sporting activity on one Saturday out of four from 1.15 p.m. to 3.30 p.m., under the supervision of the instructor, and to visit the lounge on Wednesdays during leisure hours from 5.30 p.m. to 7.30 p.m.

103. A statistical survey showing the number of minors placed in the CPL during the period from 1 January 1999 to 31 August 2000 is also annexed to this report.

Subparagraph (c)

104. General statistics for the reference year 1999 are given below:

Total minors admitted:

CSEE-Dreiborn: 122, including 30 new admissions;

CSEE-Schrassig: 90, including 24 new admissions.

Days present:

CSEE-Dreiborn: 7,628

CSEE-Schrassig: 5,657

Total in CSEEs: 13,285.

105. Statistics relating to exceptional disciplinary measures taken pursuant to the Grand Ducal regulations of 9 September 1992 relating to security and discipline in the CSEEs are given below:

Closed units:

CSEE-Dreiborn: 700 days, i.e. 9.18 per cent in relation to occupancy rate.

Number of detainees concerned: 57.

CSEE-Schrassig: 235 days, i.e. 4.15 per cent in relation to occupancy rate.

Number of detainees concerned: 37.

Transfers to the CPL:

CSEE-Dreiborn: 2,289 days, involving 16 detainees.

CSEE-Schrassig: 245 days involving 7 detainees.

106. The infrastructure at the CSEEs has been partially renovated: six cells (measuring 4.10 m x 2 m) with washbasin and toilet, shower and living area; at Dreiborn, open-air area between cells; new ventilation system and intercoms installed.

107. Solitary confinement in a CSEE constitutes an exceptional disciplinary measure which may be imposed only with the specific authorization of the governor or his deputy. The duration of such confinement may not exceed 20 days. Confinement in excess of 10 consecutive days must be reviewed by the governor, who, for this purpose, will consult the doctor, the judge who issued the placement order and the chairman of the Supervision and Coordination Commission.

108. Within 24 hours of entry into a solitary confinement section, a minor must be examined by a doctor, who will attest to his capacity to undergo this measure.

109. If a detainee remains in solitary confinement for over 48 hours, the doctor will visit him again every two days until enforcement of the measure has been completed. He may order solitary confinement to be stopped at any time if he considers it prejudicial to the health of the detainee and may recommend that the detainee be taken to hospital.

110. The governor or his deputy will visit a detainee in solitary confinement in order to talk to him about the reasons for that measure. If solitary confinement exceeds 48 hours, the governor or his deputy will regularly visit the detainee concerned.

111. The instructors will monitor a minor in solitary confinement by means of regular visits at least three times a day and will ensure that he is able to take a shower every day, receive balanced meals and go outdoors for fresh air from time to time.

112. Psychological/social service staff monitor the psychological condition of a detainee in solitary confinement, listening to what he has to say and discussing his future plans with him. Schooling is guaranteed.

Subparagraph (d)

113. For information relating to the implementation of the articles of the Convention specifically referred to by the Committee against Torture, reference may be made to part I of this report (see part I above, "Information on new measures relating to the implementation of the Convention").

B. Follow-up to the recommendations made by the Committee against Torture

114. During its consideration of Luxembourg's second periodic report, the Committee made the following recommendations:

(a) Adopt legislation defining torture, in accordance with article 1 of the Convention, and consider any act of torture as a specific offence;

(b) Make legal provision for the possibility of an effective appeal against the most severe disciplinary measures imposed on detainees and reduce the severity of these measures;

(c) End as soon as possible the practice of placing young offenders, including minors, in prisons for adults;

(d) Ensure that the obligations arising from articles 11, 12, 14 and 15 of the Convention are duly respected;

(e) Submit its third and fourth periodic reports due on 28 October 1996 and 28 October 2000, respectively, by 28 October 2000 at the latest.

Subparagraph (a)

115. This has been done with the adoption of the Act of 24 April 2000 adapting internal law to the provisions of the Convention against Torture, ratified by the Act of 31 July 1987, which incorporated a new chapter V-1 in Book II of the Penal Code (arts. 260-1 to 260-4).

116. For further details, reference may be made to part I of this report (ibid., art. 2).

Subparagraph (b)

117. For further details, reference may be made to section A, subparagraph (a), above.

Subparagraph (c)

118. In its governmental statement of August 1999, the Government reiterated its commitment to build a secure unit for minors within the CSEEs and to provide the Dreiborn and Schrassig CSEEs with the qualified staff necessary for the proper performance of their task.

119. On 14 February 2000, the chairman of the Supervision and Coordination Commission, composed of representatives of the Ministry of the Family, the Ministry of Education and the Public Prosecutor and the Governor of the CSEEs submitted a precise schedule to the competent governmental agencies for the construction of a secure unit within CSEE-Dreiborn, at an estimated cost of approximately 5 million euros. The work should be undertaken in 2001 and will thus enable minors to be detained in a facility other than a prison for adults. As soon as the secure unit is ready, the current practice of occasionally placing minors in the CPL will be terminated.

Subparagraph (d)

120. For further details, reference may be made to part I, section I, of this report.

Subparagraph (e)

121. Does not apply.

Annex

LIST OF DOCUMENTS* TO WHICH REFERENCE IS MADE

1. Constitution of 17 October 1868 (amended).

2. Act of 8 August 2000 amending article 118 of the Constitution.

3. Extracts from the Penal Code.

4. Extracts from the Code of Pre-Trial Proceedings.

5. Foreign Criminals Extradition Act (amended) of 13 March 1870.

6. Act of 28 March 1972 (amended) relating to:

   (1) The entry and residence of aliens;

   (2) Medical examinations for aliens;

   (3) The use of foreign labour.

7. Act of 12 March 1984 (amended) relating to the compensation of certain victims of bodily injury resulting from an offence and the punishment of fraudulent insolvency.

8. Act of 26 July 1986 relating to certain modes of enforcement of custodial sentences.

9. Act of 26 May 1988 relating to the placement of mentally disturbed persons in closed psychiatric establishments or services.

10. Act of 1 September 1988 relating to the civil liability of the State and public communities.

11. Grand Ducal regulations (amended) of 24 March 1989 concerning the internal administration and regulations of prisons.

12. Grand Ducal regulations of 9 September 1992 relating to security and discipline in the CSEEs.

13. Act of 27 July 1997 relating to the reorganization of the prison administration.

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* These documents are available for consultation in the Office of the United Nations High Commissioner for Human Rights.

14. Act of 31 May 1999 establishing the Grand Ducal police force and the General Police Inspection Department and amending:

(a) The Code of Pre-Trial Proceedings;

(b) The Military Organization Act (amended) of 23 July 1952;

(c) The Act of 26 May 1954 (amended), regulating the pensions of State officials;

(d) The Act of 22 June 1963 (amended) establishing salary scales for State officials;

(e) The Act of 16 April 1979 (amended) relating to discipline in the civil service;

(f) The Act of 28 March 1972 (amended) relating to:

(i) The entry and residence of aliens;

(ii) Medical examinations for aliens;

(iii) The use of foreign labour;

(g) The Act of 28 March 1986 (amended) harmonizing conditions and procedures for advancement in the various branches of State administrative departments and services;

(h) The Act of 27 July 1992 (amended) relating to the participation of Luxembourg in peacekeeping operations in the context of international organizations.

15. Act of 31 May 1999 aimed at strengthening measures to combat trafficking in human beings and the sexual exploitation of children and amending the Penal Code and the Code of Pre-Trial Proceedings.

16. Act of 18 March 2000:

Establishing a temporary protection regime;

Amending the Act of 3 April 1996 (amended) establishing a procedure for the consideration of asylum applications;

and related parliamentary document No. 4572/5.

17. Act of 24 April 2000:

(1) Adapting internal law to the provisions of the Convention against Torture, ratified approved by the Act of 31 July 1987;

(2) Transposing certain recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

(3) Amending certain provisions of the Penal Code and the Code of Pre-Trial Proceedings;

(4) Amending the Foreign Criminals Extradition Act (amended) of 13 March 1870;

(5) Amending the Act of 28 March 1972 (amended) relating to:

1. The entry and residence of aliens;

2. Medical examinations for aliens;

3. The use of foreign labour.

18. Act of 26 May 2000 relating to protection against sexual harassment in labour relations and amending various other laws.

19. Regulations of the Government in Council of 26 May 2000 establishing the Advisory Commission on Human Rights.

20. Act of 8 August 2000 amending:

(a) Book I, Chapter VIII of the Penal Code;

(b) Article 3 of the Code of Pre-Trial Proceedings;

(c) The Act of 26 May 1988 relating to the placement of mentally disturbed persons in closed psychiatric establishments or services; and

(d) The Act of 27 July 1997 relating to the reorganization of the prison administration.

21. Act of 8 August 2000 amending:

(a) Certain provisions of the Sale of Medicinal Substances and Drug Addiction Control Act (amended) of 19 February 1973;

(b) The Act of 16 July 1986 relating to certain modes of enforcement of custodial sentences.

22. Act of 8 August 2000 on International Judicial Assistance in Criminal Matters.

23. Act of 14 August 2000 approving the Statute of the International Criminal Court, done in Rome on 17 July 1998, and related parliamentary document No. 4502/1.

24. Statistical compilation concerning the period from 1 January 1999 to 31 August 2000 on:

Minors;

Detainees placed in strict solitary confinement;

Persons imprisoned (untried and convicted) for drug-related offences.

25. Report of the Psychological-Socio-Educational Service (SPSE), set up within Luxembourg prison (CPL) in 1999, concerning the supervision of minors in the CPL, and memorandum (Dienstvorschrift) by the governor of the CPL of 12 January 2000.

26. Report on overall plans for dealing with drug-dependent persons in prisons.

27. Report on possible methods of reducing the suicide risk in prisons to the fullest extent possible.

28. Report on the training of prison staff.